IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 467 OF 2001

Bharati Sahakari Bank Ltd.,
a Co-operative Bank
registered under the
Multi-State Co-operative
Societies Act, 1984,
having its Registered office
at Bharati Vidyapeeth Bhavan,
13, Sadashiv Peth, Pune 411 030
and having branches Pune,
Satara, Sangli, Solapur,
Kolhapur, Ahmednagar, Thane,
Raigad, New Mumbai and in New
Delhi and Delhi State ...Petitioner

Versus

1. The State of Maharashtra

2. Bank Karmachari Sangh,
   1349, Sadashiv Peth,
   Chimnya Ganpati Chowk,
   Pune 411 030 ...Respondents.

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Shri. P.K. Rele with Piyush Shah with D.M. Unekar, Advocates for the petitioner.

Shri. Nitin A. Kulkarni, Adv. for respondent No.2.

Shri. A.S. Shitole, A.P.P. for State.

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CORAM: SMT. V.K. TAHILRAMANI, J.

DATED: 20TH OCTOBER, 2004

ORAL JUDGMENT:-

1. Being aggrieved by the judgment and order dated 01.02.2001 passed by the Industrial Court, Pune,

the petitioner Bharati Sahakari Bank Ltd., Pune has preferred the present petition for quashing the said order.

2. Few facts necessary for disposal of this writ petition are as under:-

. The respondent No.2 Bank Karmachari Sangh had filed a complaint i.e. complaint (ULP) No. 202/1994 before the Industrial Court, Pune. The said complaint was against the Bank and the Manager of the said Bank. The said complaint was filed under Section 28(i) of the Maharashtra Recognition of Trade Unions & Prevention of Unfair Labour Practices Act, 1971 (hereinafter referred to as the "MRTU & PULP Act" for the sake of brevity). In the said matter, Industrial Court, Pune by its judgment and order dated 11.04.1997 passed the following order:-

i) The complaint is allowed.

ii) It is hereby declared that the Respondent has committed an unfair labour practice under Item 9 of Schedule IV of the M.R.T.U. and P.U.L.P. Act, 1971.

iii) The Respondent Bank is hereby restrained from entering into the settlement regarding wage-rise with the Bharati Sahakari Bank Karmachari Sanghatana and further the Bank is restrained from effecting any wage increase directly in the wages of the employee in arbitrary manner.

It may be stated here that the said order was not challenged by the petitioner.

3. Thereafter, on 8.10.1998 the petitioner Bank issued two circulars i.e. Circular Nos. M.K. 477/98-99 and M.K./478/98-99. By the first circular, on account of Silver Jubilee of the Bank, the wages of the permanent employees were raised w.e.f. 1.10.1998. By the second circular in view of the Government Resolution issued by the State Government it was stated that the permanent employees should be given the difference of the dearness allowance for the period from 1.7.1998 to Sept. 1998 and that they should be given payment based on the revised dearness allowance from October 1998 as per the Government Resolution.

Immediately thereafter, the respondent No.2 filed complaint (ULP) No. 594 of 1998 before the Industrial Court at Pune. In the said matter, the Industrial court passed an order dated 20.10.1998 directing the petitioner not to act upon the said Circular Nos. M.K. 477/98-99 and M.K./478/98-99 both dated 8.10.1998 i.e. not to give any wage rise directly to the employees in the salaries payable for the month of October 1998 to be paid in the month of November 1998, till the final disposal of the main complaint on merits; not to enter into agreement individually with any union, till the final disposal of the main complaint on merits. This ad-interim order was extended from time to time and lastly by order dated 12.1.1999 passed below Ex.U-14, its operation and execution was continued till further orders and in fact it is in operation till today.

4. Thereafter, the respondent No.2 through its Joint Secretary, filed Criminal complaint (ULP) No. 28/99 before the Labour Court, Pune under Section 48(1) of the MRTU & PULP Act alleging that the petitioner and 19 others have disobeyed the order dated 20.10.1998 passed by the Industrial Court in complaint (ULP) No. 594/1998 and thus, committed an offence and prayed that the accused be punished in accordance with law. The learned Judge, First

Labour Court, Pune held that as the petitioner has become Multi State Co-operative Society by virtue of Registration certificate dated 29.4.1999 of the Government of India, hence, the appropriate Government for the petitioner is the Central Government and, therefore, the provisions of the MRTU & PULP Act ceased to apply to the petitioner. Hence, the complaint is not maintainable and the Court had no jurisdiction to entertain the same. In view of this finding, the complaint came to be dismissed by order dated 25.7.2000.

5. The said order came to be challenged by filing Criminal Revision Application (ULP) No. 110/2000 before the Industrial Court, at Pune. The Industrial Court, Pune by order dated 01.02.2001 allowed the Cri. Revision Application and set aside the order passed by the learned Judge First Labour Court, Pune in Criminal complaint (ULP) No. 28/99. The Trial Court was directed to hear the parties and decide the original Criminal complaint on its merit in accordance with law. Being aggrieved by the said order this writ petition has been preferred.

6. I have heard the learned counsel for the petitioner as well as for respondents. On behalf of the petitioner it has been argued that the

petitioner became a Multi State Co-operative Society on 29.4.99. Consequently the appropriate Government is the Central Government from that date and therefore, the provisions of the Bombay Industrial Relations Act, 1946 and the MRTU & PULP Act ceased to apply to the petitioner and hence, no complaint under section 48(1) of the MRTU & PULP Act is maintainable against the petitioner. The learned advocate for the respondent has not disputed this position. There is also no dispute between the parties about the existence of the operation of order passed by the Industrial Court, Pune in complaint (ULP) No. 594/1998 dated 20.10.1998. The said order is reflected in para 3 of this judgment. It is also not in dispute that the said ad-interim order is still in force. It is submitted by the learned advocate for the respondent that despite the fact that the order dated 20.10.1998 was passed by the Industrial Court, Pune which order is still in operation, the petitioners have disobeyed the said order and acted contrary to the said order. Thus, according to him, this is clearly an offence under Section 48(1) of the MRTU & PULP Act.

7. It is also submitted on behalf of the petitioner that there is no dispute between the parties about the registration of the petitioner

under the Multi State Co-operative Societies Act, 1984 and in view of the Certificate dated 29.4.1999, the petitioner is declared as a Multi State Co-operative Society, therefore, the appropriate Government in respect of the petitioner is the Central Government. It is submitted that in such circumstances, from the date of issuance of Certificate of Registration, the provisions of the Bombay Industrial Relations Act, 1946 and the MRTU & PULP Act are not applicable to the petitioner, because those are State Acts.

8. However, though the petitioner has been declared to be a Multi State Co-operative Society due to which the Central Government is the appropriate Government, it is pertinent to note that the offence in question took place prior to 29th April, 1999. At that time the petitioner was not covered under the Multi State Co-operative Societies Act . The Criminal complaint (ULP) No. 20/99 clearly states about ad-interim order dated 20.10.1998 and that order is still in force. In the said complaint, it is further stated that from the pay sheets it is revealed that the petitioner has granted wage rise to the employees irrespective of the directions given by the Court and increased the basic salary of the permanent employees of the Bank, by doing this change in the service condition

of the employees, irrespective of the directions of the Industrial Court, the petitioner have willfully and intentionally disobeyed the order of the Industrial Court.

9. It is pertinent to note that wages rise was granted to the employees before the petitioner bank was registered under the Multi State Co-operative Societies Act. Certificate of registration issued by the Government of India is dated 29.4.1999. The offence in question has taken place before 29.4.1999, hence, at the relevant time when the offence was committed the appropriate Government was the State Government and as such the provisions of the MRTU & PULP Act and the Bombay Industrial Relations Act would be applicable. It may be that from the date of registration, the provisions of the said Acts will not be applicable to the petitioner, but prior to getting certificate of registration under the Multi State Co-operative Societies Act, 1984 if the petitioner has committed criminal offence it can certainly be tried under the provisions of the Law in force at that time. Looking to the fact that the registration certificate was granted only on 29.4.1999 and the criminal offence has been committed prior to that, obviously the accused would be tried under the provisions of the Acts which were in force at the

relevant time. In such case, the view taken by the learned Industrial Court, Pune in its judgment and order dated 01.02.2001 is perfectly just, legal and proper. Hence, no interference is called for. Writ petition is dismissed. Rule is discharged.

10. At this stage, the learned advocate for the petitioner has prayed that the accused persons may be exempted from personal appearance before the Trial Court till the conclusion of the proceedings. The learned advocate for the respondent No.2 has no objection to the said prayer being granted. In this view of the matter, the accused persons are granted exemption from personal appearance on all dates, unless the trial Court is of the opinion that their presence is absolutely necessary. In such case, on notice being given, the accused persons shall attend the Court on that date.

11. An authenticated copy of this judgment be supplied to the parties.